

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 52 OF 2022

(Originating from the decision of the District Land and Housing Tribunal for Kibaha in Land Appeal No. 161 of 2020, dated 10th June 2022 and Land Dispute No. 156 of 2020 at Mlandizi Ward Tribunal)

SHABANI MLISHO DILUNGA.....APPELLANT

VERSUS

RAJABU SAIDI MGONANZE.....1ST RESPONDENT

SELEMANI MELI.....2ND RESPONDENT

Date of last order: 16/11/2022

Date of ruling: 23/11/2022

RULING

A.MSAFIRI, J.

This appeal arises from the decision of the District Land and Housing Tribunal for Kibaha (the DLHT) in the exercise of its appellate jurisdiction. Being aggrieved with the decision of the DLHT the above named appellant lodged the present appeal with four (4) grounds of appeal which I will not reproduce here for reason that would be apparent shortly.

On 1st November 2022 when the appeal was called on for hearing before me, Ms. Nasra Mashaura and Ms. Mebo Mgaya learned advocates

Alls.

appeared for the appellant and respondents respectively. Before hearing had commenced, Ms. Mgaya learned advocate for the respondents raised a concern that the instant appeal was filed out of time. Hence following that concern, I invited the learned advocates to address the Court whether the appeal is competent before the Court.

Ms. Mgaya submitted that the present appeal originates from the DLHT exercising its appellate jurisdiction hence in terms of Section 38 (1) of the Land Disputes Courts Act [CAP 216 R.E 2019] (the Act) an appeal should be lodged in court within 60 days.

Ms. Mgaya contended further that the decision appealed against was delivered on 10/6/2022 and the present appeal was lodged on 10th August 2022 hence the appeal was lodged after expiry of 60 days. Ms. Mgaya submitted further that the appellant was required to seek for an extension of time to lodge the appeal out of time but he did not do so hence the appeal being lodged out of time should be dismissed with costs.

On reply, Ms. Mashaura contended that the petition of appeal was presented for filing on 9/8/2022 but the appellant could not pay the requisite filing fee since there was a problem in payment system as there

Alls.

was no internet connection. To support her argument Ms. Mashaura procured an affidavit sworn by Safi Mathias Hape the court clerk who stated in her affidavit that the appeal was presented for filing on 9/8/2022 but payment system was not operative until on the following day when the system resumed. She claimed that there was a technical problem hence it was impossible to process control number for the appellant to pay the requisite fee.

Ms. Mashaura submitted further that right to appeal is a constitutional right so the appellant should not be condemned for something which was not his fault.

On rejoinder, Ms. Mgaya submitted that the reasons advanced by appellant should have been brought when the appellant was seeking for an extension of time to file his appeal and not at this stage. Ms. Mgaya insisted that the appellant should have sought leave to file the appeal out of time.

Having gone through the submissions by the learned advocates for the parties, the sole issue for my determination is whether the present appeal is time barred.

Acte.

Rightly as submitted by Ms. Mgaya in terms of Section 38 of the Act, the appeal from the DLHT in the exercise of its respective appellate jurisdiction is required to be filed within 60 days from the date of the decision. Equally as rightly submitted by Ms. Mashaura, such appeals are to be filed before the DLHT which passed the decision and then the DLHT is required to forward the record to this Court.

In the instant appeal, as stated before, the DLHT was exercising its appellate jurisdiction against the decision of the Mlandizi Ward Tribunal. The decision of the DLHT was passed on 10th June 2022 hence as the appellant was aggrieved he was required to lodge his appeal within sixty days from the date of the decision.

It follows therefore that the appeal should have been lodged on or before 9th August 2022. By filing the appeal on 10th August 2022, the appellant was out of time by one day. The appellant claimed that he presented his appeal for filing on 9th August 2022 but he could not pay for the same due to the reason that there was a problem in the payment system. *Allb.*

There is in place affidavit sworn by the clerk to the DLHT who stated that there was technical problem in issuing control number on 9th August 2022 hence it could not have been possible to effect payment.

While I agree with Ms. Mashaura that right to appeal is a constitutional right, I must point out that such right is to be exercised subject to the requirement of the law. That is by appealing within time. I have gone through the affidavit from the clerk to the DLHT purporting to support the appellant's claims. The said affidavit was filed in court on 15th November 2022. I pose to ask myself one pertinent question isn't the said affidavit an afterthought? I state so because, on 1st November 2022 Ms. Mgaya submitted in chief in respect of the competence of the appeal before me.

It is on record that when Ms. Mashaura was given a chance to reply to Ms. Mgaya's submissions, she prayed for an adjournment so that she could respond to Ms. Mgaya's submission on another date. I granted the prayer for adjournment and fixed the matter to come on 16/11/2022 for continuation of hearing. A day before hearing i.e. 15/11/2022 the appellant filed the purported affidavit in Court. This is not only an afterthought but also an abuse to a fair administration of justice.

Alle.

If truly the appellant was unable to file his appeal on 9th August 2022 due to problems in payment system and also if truly he presented his appeal for filing on that date the clerk should have received, sign and dated the same to have been received on 9th August 2022 and then make an affidavit on the next day when the payment system resumed.

Swearing an affidavit after more than **three months** have lapsed to state that payment was not operative is an afterthought.

Hence I proceed to sustain objection raised by the respondent, this appeal is time barred and I proceed to strike it out with costs.

It is so ordered.



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**A. MSAFIRI,
JUDGE**

23/11/2022